

## **DETAILED ACTION**

### ***Examiner's Amendment***

A typo is corrected for Abstract. The Abstract is now in single paragraph, as US Patent Practice requires. Thus, Abstract has been changed to:

#### **-- ABSTRACT OF THE DISCLOSURE**

A set of XML-based markers includes an event marker indicating an event, a condition marker indicating a state of a first media object, and an action marker indicating a second media object, an attribute of the second media object, and a value of the attribute. The markers represent a function to assign the value to the attribute of the second media object if the event is detected and if the first media object possesses the indicated state. A set of XML-based markers representing media object elements. Each marker includes a test- element attribute for indicating a particular media object element, a test-attribute attribute for indicating an attribute of the particular element, and a test-value attribute for indicating a test value to compare with a value of the specified attribute. --.

### ***Examiner's Comments***

All current claims are allowed. Claims 5-29, 67 are allowed. All other claims were cancelled. See file history.

The following is an examiner's comment on allowance:

This case is allowed on the basis of preponderance of evidence as presented to the USPTO. The examiner has brought out arguments against allowance. The final few documents explain why the examiner's previous arguments have been considered to be lesser weight than that of arguments for allowance. These final documents record the interviews the attorney had with SPE (not of the examiner's art unit, but was supervising this case) which did require acquiescence of the Technology Center itself (rather than merely the examiners).

While the examiner does have arguments against allowance (see file history), the examiner must also consider the totality of evidence. A decision to make or maintain a rejection in the face of all the evidence must show that it was based on the totality of the evidence. Facts established by rebuttal evidence must be evaluated along with the facts on which the conclusion of obviousness was reached, not against the conclusion itself. *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990). The allowance does not mean there exists no evidence against allowance, but does mean that the totality of evidence (whether for or against allowance) was considered. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it.

This case and its parent case (abandoned) have considered issues of 35 USC 101 (see file history for 35 USC 101 rejections) and 35 USC 103. Under the legal

standard and under the totality of evidence, notwithstanding some reasonable doubts as to the allowance, the claims are allowed because of the preponderance of evidence for allowance.

***Conclusion***

***Points of Contact***

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(571) 273-8300, (for formal communications intended for entry)

**Or:**

Art Unit: 2134

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Kambiz Zand whose telephone number is (571) 272-3811.

/David Y Jung/

Acting Examiner of Art Unit 2134

David Jung

David Jung

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Patent Examiner

10/21/08